

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1727

Introduced by Assembly Member Gonzalez
(Coauthor: Senator Allen)

January 28, 2016

An act to add Chapter 4.8 (commencing with Section 1080) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1727, as amended, Gonzalez. Hosting platforms: independent contractors.

Existing law relating to employment governs the grant of restraining orders or injunctive relief in labor disputes, as defined.

This bill would establish for eligible groups of independent contractors the right to organize and negotiate with hosting platforms, and would declare the activity of such a group to be a labor dispute for purposes of injunctive relief. The bill would require a hosting platform to meet and negotiate with a group on specified subjects. The bill would define terms for those purposes.

The bill would require that, at the request of the group, a written contract for independent contractor services, entered into on or after the date of the conclusion of negotiations conducted in accordance with the bill, by the hosting platform and a member of that group, incorporate any agreement reached in those negotiations.

The bill would require the State Mediation and Conciliation Service to facilitate negotiations, provide mediation services, and investigate

any complaint by a group claiming a violation of the negotiation requirement. The bill would require the service, if it finds that there is probable cause to believe a violation has occurred, to bring an action in a specified superior court for injunctive and other appropriate equitable relief to remedy the violation.

The bill would prohibit a person from penalizing or retaliating against an independent contractor for taking specified actions within the scope of the bill.

The bill would authorize an independent contractor or a representative of independent contractors claiming a violation under this bill to bring an action in superior court for prescribed remedies, and would provide for treble damages with regard to lost income for a willful violation.

The exercise of any rights established by the bill would not be admissible as evidence that a person is an independent contractor in any judicial or administrative proceeding.

The bill would make its provisions severable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) A new form of work has proliferated in which individuals
4 work by the job through an electronic platform, such as the Internet
5 or telephone. These individuals are hired through these hosting
6 platforms to perform short-term work, usually of a day or less, for
7 multiple customers.

8 (2) These individuals are not treated by the hosting platforms
9 as employees and do not receive the benefit of state labor
10 protection laws such as minimum wage, unemployment insurance,
11 and workers' compensation. The platforms treat these individuals
12 as independent contractors and even though they perform work
13 for multiple clients, usually individual people, the individuals
14 securing work through a hosting platform are normally prohibited
15 from negotiating the terms of their services. Instead, the hosting
16 platforms dictate the terms and take a considerable portion of the
17 amount paid for services, even though the hosting platforms
18 purport that they provide only a means of connecting workers with
19 clients.

1 (3) *These are circumstances that inevitably lead to exploitation.*
2 *The people who secure work through the hosting platforms may*
3 *in fact be employees, but establishing their true status often*
4 *requires lengthy and expensive litigation during the pendency of*
5 *which they continue to have no protection.*

6 (b) *The Legislature therefore finds and declares that the*
7 *bargaining power between the hosting platforms and the people*
8 *seeking work through them must be better balanced and creates*
9 *in this act a process for these workers to get together and negotiate*
10 *with the hosting platforms for the improvements they desire.*

11 (c) *The Legislature further finds and declares that, through*
12 *these negotiations, these workers will be able to improve their*
13 *conditions, including their income, to the benefit of the economy*
14 *of this state and reduce pressure on public resources.*

15 **SECTION 1.**

16 SEC. 2. Chapter 4.8 (commencing with Section 1080) is added
17 to Part 3 of Division 2 of the Labor Code, to read:

18
19 CHAPTER 4.8. HOSTING PLATFORMS

20
21 1080. As used in this chapter:

22 (a) “Group activity” means to self-organize, to negotiate as a
23 group with one or more hosting platforms, or to engage together
24 in other activities for the purpose of group negotiations or other
25 mutual aid or protection, which activity includes, but is not limited,
26 to the following:

27 (1) Communicating with each other and with hosting platforms,
28 customers, and the public through any medium, including, but not
29 limited to, social media and other electronic modes of
30 communication.

31 (2) Withholding or restricting the amount of work done through
32 a hosting platform at any time and for any duration. This paragraph
33 does not apply to an independent contractor who performs
34 “supportive services,” as defined in Section 12300.1 of the Welfare
35 and Institutions Code.

36 (3) Boycotting or critiquing a hosting platform’s business
37 practices.

38 (4) Reporting to law enforcement authorities or making public
39 practices of a hosting platform which an independent contractor

1 reasonably believes violate local, state, or federal law and adversely
2 affect either workers or clients, or both.

3 (b) “Hosting platform” is a facility for connecting people or
4 entities seeking to hire people for work with people seeking to
5 perform that work, using any medium of facilitation, including,
6 but not limited to, a dispatch service, an Internet Web site, or other
7 Internet-based site. “Hosting platform” does not include a service
8 provider if that entity provides only listings of goods or services
9 that are contracted directly between buyers and sellers without the
10 involvement of the provider and receives no income related to the
11 price of the transaction.

12 1081. (a) An independent contractor who is not treated by a
13 hosting platform as an employee and who does not employ his or
14 her own employees shall have the right to engage in group activity
15 with respect to one or more hosting platforms.

16 (b) Work by an independent contractor, including the use of
17 equipment or goods supplied as part of the work performed by the
18 independent contractor, is labor within the meaning of Section
19 16703 of the Business and Professions Code and group activity
20 by independent contractors shall not be subject to any statutory or
21 common law prohibition or limitation on combinations in restraint
22 of trade, including, but not limited to, Chapter 2 (commencing
23 with Section 16700) of Part 2 of Division 7 of the Business and
24 Professions Code.

25 (c) Group activity is a “labor dispute” within the meaning of
26 Section 527.3 of the Code of Civil Procedure and Section 1138.1,
27 provided that a court may issue injunctive relief to remedy
28 violations of this chapter pursuant to ~~Sections _____ and _____~~.
29 *subdivisions (e) and (g)*.

30 (d) (1) A hosting platform shall meet at reasonable times and
31 negotiate in good faith about allowed subjects for negotiation with
32 any group of independent contractors constituting at least 10 of
33 the independent contractors using the platform on an average of
34 at least once per week. As used in this paragraph, “allowed subjects
35 for negotiation” are pricing, division of revenue, priority for
36 assignments or listings, advertising by independent contractors on
37 the hosting platform, insurance, acceptance and termination of
38 independent contractor participation on the hosting platform,
39 acceptance or refusal of services by independent contractors or
40 customers, and responsibility for nonpayment by customers.

1 (2) An individual or organization that represents independent
2 contractors in negotiations with a hosting platform regarding the
3 allowed subjects of negotiation pursuant to this section shall not
4 be funded directly or indirectly by a hosting platform.

5 (3) Participation in the group shall be evidenced by an electronic
6 communication from an independent contractor using the same
7 address the independent contractor uses to communicate with the
8 hosting platform, or a physical document signed by the independent
9 contractor, sent to either the hosting platform or to one or more
10 other members of the group accepting participation in the group
11 and agreeing to be bound contractually by the outcome of any
12 negotiations between the group and the hosting platform. An
13 independent contractor shall not be bound by the outcome of any
14 negotiations between a group and a hosting platform unless the
15 independent contractor has given that authorization.

16 (4) At the request of the group, a written contract for
17 independent contractor services, entered into on or after the date
18 of the conclusion of negotiations conducted in accordance with
19 paragraph (1), between the hosting platform and a member of that
20 group, shall incorporate any agreement reached in those
21 negotiations.

22 (e) The State Mediation and Conciliation Service shall facilitate
23 the performance of the obligation of a hosting platform under
24 subdivision (d). The State Mediation and Conciliation Service
25 shall provide meeting space for negotiations unless the hosting
26 platform and the group make other arrangements that are mutually
27 agreeable. The State Mediation and Conciliation Service shall
28 provide mediation services at the request of either the hosting
29 platform or the group. The State Mediation and Conciliation
30 Service shall investigate any complaint by a group claiming a
31 violation of subdivision (d), and, if it finds that there is probable
32 cause to believe a violation has occurred, bring an action in the
33 Superior Court of the State of California for the City and County
34 of San Francisco for injunctive and other appropriate equitable
35 relief to remedy the violation. The court shall award reasonable
36 attorney's fees and costs to the State Mediation and Conciliation
37 Service if it prevails in any enforcement action.

38 (f) A person shall not terminate, discriminate against, or
39 otherwise penalize or retaliate against any independent contractor
40 for exercising any rights established in this chapter or for making

1 a complaint, participating in any enforcement proceedings under
2 this chapter, using any civil remedies to enforce his or her rights,
3 or otherwise asserting his or her rights under this chapter or
4 demonstrating his or her support for the policies of this chapter.
5 A person terminating or taking any other adverse action against
6 any independent contractor who has engaged in any of the
7 foregoing activities within one year preceding the termination or
8 other adverse action shall provide to the independent contractor
9 at or before the time of the termination or other adverse action a
10 detailed written statement of the reason or reasons for the
11 termination or other adverse action, including all the facts
12 substantiating the reason or reasons and all facts known to the
13 person that contradict the substantiating facts.

14 (g) An independent contractor or a representative of one or more
15 independent contractors claiming a violation of this chapter may
16 bring an action in superior court and shall be entitled to all remedies
17 available under the law or in equity appropriate to remedy that
18 violation, including, but not limited to, injunctive relief or other
19 equitable relief, including reinstatement to participation in a hosting
20 platform and compensatory damages. For a willful violation of
21 subdivision (d), the amount of damages attributable to lost income
22 due to the violation shall be trebled.

23 *1082. (a) The exercise of any rights established by this chapter*
24 *shall not be admissible as evidence that a person is an independent*
25 *contractor in any judicial or administrative proceeding.*

26 *(b) Nothing in this chapter is intended to impact the*
27 *determination of whether any worker is an employee or*
28 *independent contractor or to impact any pending litigation.*

29 ~~1082.~~

30 *1083.* The provisions of this chapter are severable. If any
31 provision of this chapter or its application is held invalid, that
32 invalidity shall not affect other provisions or applications that can
33 be given effect without the invalid provision or application.